IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.839 OF 1997

Anusandhan Investments Limited. ..Petitioner.

V/s.

1) M.R.Singh, Dy. Commissioner
of Income-tax, Spl. Range
53, Mumbai

2) Union of India ..Respondents.

Mr.S.J.Mehta, Advocate for the petitioner.

Mr.A.N. Kotangale, Advocate for Respondents.

**CORAM : V.C.GOKHALE AND
J.P.DEVADHAR, JJ.**

DATED : 22ND AUGUST, 2006.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. This petition is filed to challenge the notice dated 5th December, 1996 issued under section 148 of the Income Tax Act, 1961 ('the Act' for short). By the said notice, the assessing officer has sought to reopen the assessment for the assessment year 1992-93.

2. The petitioner is a public limited company engaged in the business of investments.

3. For A.Y. 92-93 the petitioner had filed its return of income and on 19/3/93 the assessing officer had issued an intimation under section 143(1) of the Act.

4. The reasons recorded for reopening the A.Y. 1992-93 read thus:-

> " The return filed for A.Y.92-93 was processed u/s. 143(1)(a) on 19-3-03. As mentioned in the order for A.Y.93-94 passed u/s.143(3) dated 31-1-96, it has been held that the actual transfer of shares has taken place in the period relevant for A.Y. 92-93 and hence Capital Gains leviable in A.Y.92-93. This aspect has been discussed on page 17 and 18 of the order for A.Y. 93-94.
>
> As such notice u/s.148 is being issued for A.Y.92-93 to bring to tax the capital gains in this year. Issue notice u/s. 148 as I have reason to believe that income chargeable to tax has escape assessment. "

Thus, the notice under section 148 of the Act

seeking to reopen the assessment for AY 92-93 has been issued based on the information contained in A.Y. 1993-94.

5. Mr.Mehta, learned counsel appearing on behalf of the petitioner submitted that the decision for A.Y. 1993-94 has been challenged by the petitioner and the same is pending before the appellate authority. Therefore, reopening the assessment based on the assessment order for 1993-94 is unwarranted. Mr.Mehta further submitted that the transaction of sale of shares as per agreement dated 3/1/92 was in fact concluded during the A.Y. 1993-94 and, therefore, capital gains if any arising from the said transaction cannot be taxed in A.Y.1992-93. Therefore, reopening of the assessment for A.Y.1992-93 based on the observations contained in the assessment order for A.Y. 93-94 are wholly unjustified.

6. The limited question required to be considered in this petition is, whether the reopening of the assessment for A.Y.1992-93 is justified or not. Admittedly, in the assessment order for A.Y.1993-94 the assessing officer has held that the sale of shares as per agreement dated 3/1/92 took place on 3/1/92 itself and the capital gains in respect thereof are leviable

in A.Y. 1992-93. Admittedly, the issue regarding the capital gains arising from the sale of shares pursuant to the agreement dated 3/1/92 was neither raised nor discussed in the assessment order for A.Y.1992-93. It is well established in law that the assessments can be reopened on the basis of the information contained in the assessment for subsequent years. Therefore, reopening the assessment based on the assessment order for A.Y.1993-94, wherein it is held that the relationship of 100% holding subsidiary company was acquired with the only intention of evading the capital gains tax cannot be faulted.

7. We make it clear that despite the information contained in the assessment order for A.Y.1993-94, it will be open to the assessee to place all the materials before the assessing officer to establish that the liability to capital gains tax, if any arose in A.Y. 1993-94 and not in A.Y.1992-93. It will be open to the assessing officer to pass appropriate order on merits after hearing the petitioner. The fact that the assessment order for A.Y.93-94 is pending before the appellant authority is wholly irrelevant for the purpose of reopening the assessment. As stated earlier, the information contained in the said assessment order is sufficient to reopen the assessment

for A.Y.1992-93.

8. For the reasons stated hereinabove, we do not find any merit in the petition and the same is hereby dismissed. Rule stands discharged with no order as to costs.

9. The interim relief granted at the time of admission of the petition stands vacated.

10. All contentions of both parties are kept open.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)